carrier regulation and therefore should not be forced to relinquish any obligations and benefits of such regulation by a broad forbearance grant by the Commission.[160] Accordingly, the forbearance relief granted in this Order is limited to AT&T and the services it specified.

42. To ensure that customers will have the benefit of a single regime for AT&T's packet-switched and optical transmission broadband offerings, we condition the forbearance relief granted to AT&T on its not filing or maintaining any interstate tariffs for its specified broadband services. Thus, to the extent AT&T wishes to take advantage of the relief granted in this Order for any particular service specified in its petitions, it must follow our rules for nondominant interexchange carriers in connection with that service. Consistent with the Commission's analysis in the *Interexchange Forbearance Order*, we find that precluding AT&T from tariffing its packet-switched broadband services and its optical transmission services while taking advantage of that relief is necessary to protect consumers and the public interest because in such circumstances will limit AT&T's ability to invoke the filed rate doctrine in contractual disputes with their customers.[161] Precluding such tariffs also will restrict AT&T's ability to assert "deemed lawful" status for tariff filings that are not accompanied by cost support.[162] We distinguish this from the broadband relief granted to ACS in the *ACS Dominance Forbearance Order*, in which the Commission conditioned its forbearance relief on, among other things, ACS's continuing to file tariffs for switched access, special access, and end-user services.[163] In that instance, the Commission found that filing of tariffs was appropriate for the Commission to monitor ACS's compliance with the other conditions the Commission adopted in that order, including conditions arising from ACS's status as a rate-of-return carrier.[164] In addition, there was consensus in the record that continued tariffing was appropriate given the unique circumstances in the Anchorage study area. Here, we are addressing AT&T, which, unlike ACS, is not subject to rate-of-return regulation in the provision of any interstate access services, nor is it subject to many of the conditions adopted in the *ACS Dominance Forbearance Order*. Further, commenters here suggest that a mandatory detariffing regime would be more appropriate.[165] Accordingly, we find that these consumer protection and public interest benefits provide independent reasons for conditioning AT&T's ability to take advantage of the relief granted here on mandatory detariffing of the broadband transmission services for which we grant relief.

---

[160] NTCA Reply at 5.

[161] *See Interexchange Forbearance Order*, 11 FCC Rcd at 20760, para. 52 (emphasis added) (finding that "not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest, including eliminating the possible invocation of the filed rate doctrine by nondominant interexchange carriers, and establishing market conditions that more closely resemble an unregulated environment"). We note that certain exceptions to the Commission's mandatory detariffing rules exist. Pursuant to the "filed-rate" doctrine, where a filed tariff rate, term or condition differs from a rate, term, or condition set in a non-tariffed carrier-customer contract, the carrier is required to assess the tariff rate, term or condition. *See Armour Packing Co. v. United States*, 209 U.S. 56 (1908); *American Broadcasting Cos., Inc. v. FCC*, 643 F.2d 818 (D.C. Cir. 1980); *see also Aero Trucking, Inc. v. Regal Tube Co.*, 594 F.2d 619 (7th Cir. 1979); *Farley Terminal Co., Inc. v. Atchison, T. & S.F. Ry.*, 522 F.2d 1095 (9th Cir. 1975), *cert. denied*, 423 U.S. 996 (1975). Consequently, if a carrier unilaterally changes a rate by filing a tariff revision, the newly filed rate becomes the applicable rate unless the revised rate is found to be unjust, unreasonable, or unlawful under the Act. *See* 47 U.S.C. § 201(b); *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116 (1990).

[162] *See* 47 U.S.C. § 204(a)(3).

[163] *ACS Dominance Forbearance Order*, FCC 07-149, at paras. 61, 89.

[164] *See ACS Dominance Forbearance Order*, FCC 07-149, at paras. 4, 89.

[165] *See* Alpheus Comments at 22 (arguing that permissive detariffing would allow the BOCs to tariff "purported private carriage services so they may invoke the filed rate doctrine against their retail and CLEC wholesale broadband customers")..

b. Protection of Consumers

43. Section 10(a)(2) of the Act requires us to determine whether dominant carrier regulation of the AT&T-specified services is necessary to protect consumers.[166] For reasons similar to those that persuade us that these regulations are not necessary within the meaning of section 10(a)(1), we also determine that their application to AT&T's existing specified services is not necessary for the protection of consumers. As we found above, AT&T faces sufficient pressure from actual and potential competition to protect consumers, which gives AT&T incentive to offer innovative services. In light of these conclusions, we find that the combination of dominant carrier tariffing requirements and the accompanying cost support can hinder, instead of protect, consumers' ability to secure better service offerings. Finally, as we explain below,[167] we are not forbearing from any public policy obligations applicable to these services, including those related to 911, emergency preparedness, customer privacy, or universal service, and consumers therefore do not lose protections in these important areas.

44. Conversely, we find that restricting our forbearance grant to AT&T and the existing services as specified in its petitions is appropriate under section 10(a)(2).[168] AT&T has not provided sufficient information regarding any broadband services, other than those specifically identified in its petitions, to allow us to reach a forbearance determination under section 10(a).[169] We cannot make a finding on the record before us that AT&T will face sufficient competitive pressure with regard to services it does not currently offer,[170] or that dominant carrier regulation of these as yet unoffered services otherwise will not be necessary to protect consumers. In addition, as explained above,[171] carriers that have not filed similar forbearance petitions are free to do so, as well as to seek relief from regulatory obligations through rulemaking proceedings or petitions to be declared nondominant.

c. Public Interest

45. Section 10(a)(3) of the Act requires us to determine whether forbearance from dominant carrier regulation for AT&T's non-TDM-based, packet-switched broadband services and its non-TDM-based, optical transmission services is consistent with the public interest.[172] In making this determination, section 10(b) of the Act directs us to consider whether forbearance from enforcing the provisions at issue will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. If we determine that forbearance will promote competition among providers of telecommunications services, that determination may be a basis for finding that forbearance is in the public interest.[173]

46. We agree with AT&T that a deregulatory approach for its provision of non-TDM-based, packet-switched broadband services and non-TDM-based, optical transmission services will serve the

[166] 47 U.S.C. § 160(a)(2).

[167] *See infra* parts III.D.3 & III.D.4.

[168] We note that AT&T withdrew its request for relief with regard to VPN services, and interstate interexchange services for which we granted relief in the *Section 272 Sunset Order*. *See* AT&T Sept. 7, 2007 *Ex Parte* Letter; *see also* AT&T Sept. 12, 2007 *Ex Parte* Letter. The relief we grant AT&T excludes these services.

[169] *Qwest Omaha Order*, 20 FCC Rcd at 19438, para. 50 (denying Qwest's petition with respect to the enterprise market because Qwest had failed to provide sufficient data for its service territory for the entire MSA to allow the Commission to make a forbearance determination).

[170] *See supra* para. 43.

[171] *See supra* para. 41.

[172] 47 U.S.C. § 160(a)(3).

[173] 47 U.S.C. § 160(b).

public interest by eliminating the market distortions that asymmetrical regulation of these services causes.[174] In particular, the record in this proceeding shows that dominant carrier regulation impedes AT&T's efforts to compete effectively with nondominant providers of these services.[175] The record also makes clear that such regulation keeps AT&T from responding efficiently and in a timely manner to market-based pricing promotions, including volume and term discounts, or special arrangements offered by competitors.[176] In particular, AT&T has shown that dominant carrier regulation of its specified services makes it unnecessarily difficult for it to negotiate nationwide arrangements tailored to the needs of large enterprise customers with geographically dispersed locations, because its tariff filings necessarily provide competitors with notice of its pricing strategies and competitive innovations.[177]

47. Forbearance from the application of dominant carrier regulation to AT&T's non-TDM-based, packet-switched broadband services and non-TDM-based, optical transmission services also will promote the public interest by furthering the deployment of advanced services.[178] Indeed, forbearance in this case is entirely consistent with section 706 of the 1996 Act and Congress's express goals of "promot[ing] competition and reduc[ing] regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[179] Forbearance also is consistent with section 7(a) of the Act, which establishes a national policy of "encourag[ing] the provision of new technologies and services to the public."[180] In addition, for the reasons described above, we conclude that granting AT&T this relief will help promote competitive market conditions and enhance competition among providers of telecommunications services as contemplated by section 10(b). By allowing AT&T to compete more effectively in the provision of the broadband transmission services that it currently offers, forbearance from dominant carrier regulation of these services will enhance competition among providers in a manner consistent with the public interest.[181]

---

[174] *See, e.g.*, AT&T Petition at 7 (arguing that forbearance would eliminate distorting effects on competition).

[175] *See* Legacy BellSouth Petition at 5 (claiming that the current Title II and *Computer Inquiry* requirements deny Legacy BellSouth and similarly situated carriers the flexibility that their competitors enjoy in the broadband market).

[176] *See, e.g.*, AT&T Petition at 6; Legacy BellSouth Petition at 13-14. While we note that AT&T has phase II pricing flexibility in certain markets where the Commission has determined the competitive triggers have been met, this does not alter our ultimate conclusions for the reasons described above. *See supra.* n.94.

[177] *See, e.g.*, cite from AT&T or BellSouth.

[178] Section 706 (c)(1) of the 1996 Act, *codified at* 47 U.S.C. § 157 nt; *see* AT&T Petition at 27; *see also* Legacy BellSouth Petition at 14-15. The Commission has concluded that section 706 is not an independent grant of forbearance authority. *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012, 24044-48, paras. 69-77 (1998); *see also ACS Dominance Forbearance Order*, para. 118 n.327.

[179] 1996 Act Preamble, 110 Stat. at 56; *see* 47 U.S.C. § 157 nt. In section 706 of the 1996 Act, Congress directed the Commission to encourage, without regard to transmission media or technology, the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis through, among other things, removing barriers to infrastructure investment. 47 U.S.C. § 157 nt.

[180] 47 U.S.C. § 157(a).

[181] We recognize, of course, that theoretically forbearance from dominant carrier regulation for broadband telecommunications services other than those AT&T currently offers or for incumbent LECs other than AT&T also may advance purposes behind sections 7(a) and 706. In the event that AT&T or other carriers request additional relief from dominant carrier regulation, we will evaluate on the record developed with regard to those requests whether grant of those requests would advance these purposes. However, for the reasons set forth in this Order, we cannot conclude on the record before us that additional forbearance here would meet the statutory forbearance criteria.

48. Our finding that public interest benefits will accrue from allowing AT&T to provide non-TDM-based, packet-switched broadband services and non-TDM-based, optical transmission services subject to the same regulations as their nondominant competitors also is consistent with the Commission's most recent report to Congress on the availability of advanced telecommunications capability under section 706 of the 1996 Act. In that report, the Commission determined that a diverse range of broadband technologies and facilities-based platforms that promote both price and quality-of-service competition will be available to consumers, and that the prospects of such competition "lend credence to calls for restrained regulation of advanced telecommunications technologies and advanced telecommunications providers."[182]

49. We disagree with the commenters that urge that forbearing from the application of dominant carrier regulation to AT&T's existing, non-TDM-based, packet-switched broadband services and existing, non-TDM-based, optical transmission services would be inconsistent with the public interest.[183] Forbearing from application of dominant carrier regulation will increase competition by freeing AT&T from unnecessary regulation and will serve the public interest by promoting regulatory parity among providers of these services. In addition, the directives of section 706 of the 1996 Act require that we ensure that our broadband policies promote infrastructure investment, consistent with our other statutory obligations under the Act. As we found in the *Wireline Broadband Internet Access Services Order*, regulation that constrains incentives to invest in and deploy the infrastructure needed to deliver broadband services is not in the public interest.[184] By regulating AT&T on the same terms as its nondominant competitors, we will encourage all potential investors in broadband network platforms, and not just a particular group of investors, to be able to make market-based, rather than regulatory-driven, investment and deployment decisions. This is particularly true for new technologies and services that provide voice, video, Internet access, and other broadband applications.

50. We agree with AT&T regarding the need to ensure regulatory parity between Verizon on the one hand, and AT&T on the other.[185] As noted above, Verizon's petition for forbearance for enterprise broadband services was deemed granted by operation of law on March 19, 2006.[186] We seek to avoid persistent regulatory disparities between similarly-situated competitors, and seek to minimize the time in which they are treated differently. Thus, we will issue an order addressing Verizon's forbearance petition, as well as the other BOC forbearance petitions seeking comparable relief, on grounds comparable to those set forth in this order within 30 days.[187]

---

[182] *Availability of Advanced Telecommunications Capability in the United States*, GN Docket No. 04-54, Fourth Report to Congress, 19 FCC Rcd 20540 (2004).

[183] *See, e.g.*, Broadview Comments at 34-35; EarthLink Comments at 20-21, COMPTEL Comments at 19-21; Sprint Nextel at 16-19.

[184] *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14878, para. 45.

[185] *See, e.g.*, AT&T Petition at 2-3; Legacy BellSouth Petition at 13. We do not find, however, that concerns regarding regulatory parity, standing alone, are a sufficient basis to grant forbearance under section 10.

[186] We also note that the Commission recently granted ACS forbearance for certain enterprise broadband services in Anchorage. *See ACS Dominance Forbearance Order*. We agree with GCI that ACS is not necessarily similarly situated to AT&T, and note that the Commission repeatedly has found that the Anchorage marketplace has many unique characteristics. GCI Reply at 2-4; *ACS Dominance Forbearance Order*, FCC 07-149 at para. 3; *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, FCC 06-188, para. 41 (rel. Jan. 30, 2007); *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules*, CPD 98-40, Order, 15 FCC Rcd 20655 (2000).

[187] *See* Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Broadband Services, WC Docket No. 06-125 (filed Sept. 12, 2007); Verizon Petition. We will address other similar petitions soon thereafter. *See* Petition of the Embarq Local Operating Companies for Forbearance (continued....)

51. Consistent with our determinations under sections 10(a)(1) and 10(a)(2),[188] we find that extending our forbearance from dominant carrier regulation to services that AT&T does not currently offer would be contrary to the public interest. Specifically, because the record before us is insufficient to support a finding that AT&T will lack market power with regard to these as yet unoffered services, we cannot conclude that forbearance in this instance would be consistent with the public interest. We also believe that the public interest would be better served by our allowing carriers that are not before us to file their own forbearance petitions seeking relief from dominant carrier regulation for specific broadband telecommunications services or seek regulatory relief through rulemaking proceedings or petitions to be declared nondominant, rather than extending our forbearance action to such carriers.

2. *Computer Inquiry* Requirements

52. As part of its request for relief similar to that granted Verizon by operation of law, AT&T seeks forbearance from application of the *Computer Inquiry* requirements to its specified broadband services.[189] We address first the *Computer Inquiry* requirements as they apply to AT&T and then turn to less onerous requirements that apply to AT&T's independent incumbent LEC affiliate, SNET.[190]

a. BOC Requirements

53. Consistent with the treatment of wireline broadband Internet access service in the Wireline *Broadband Internet Access Services Order*, we forbear from application of our BOC-specific *Computer Inquiry* rules to the extent that AT&T offers information services in conjunction with its existing non-TDM-based, packet-switched broadband services or its existing non-TDM-based, optical transmission services.[191] This forbearance action is conditioned on AT&T's compliance with the non-BOC transmission access and nondiscrimination requirements that we describe below in connection with forbearance granted for SNET.[192]

54. The reasons that persuaded the Commission in the *Wireline Broadband Internet Access Services Order* to eliminate the *Computer Inquiry* rules as they applied to wireline broadband Internet access service also persuade us to forbear from application of the BOC-specific *Computer Inquiry* rules to any information services AT&T may offer in conjunction with one or more of its existing specified broadband services. Specifically, the enterprise customers that seek to obtain such information services

(Continued from previous page)
Under 47 U.S.C. § 160(c) from Application of *Computer Inquiry* and Certain Title II Common-Carriage Requirements, WC Docket No. 06-147 (filed July 26, 2006); Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Their Broadband Services, WC Docket No. 06-147 (filed Aug. 4, 2006).

[188] *See supra* parts III.C.1.a & III.C.1.b.

[189] As discussed below, we grant forbearance from certain *Computer Inquiry* requirements that would apply to the enterprise broadband service solely by virtue of their use as the transmission component of an information service. As a practical matter, however, we note that the specified broadband services all appear to be transmission services that AT&T chooses to offer on a common carrier basis today, and thus remain subject to the same Title II regulation applicable to nondominant carriers.

[190] SNET is AT&T's independent incumbent LEC affiliate. *See Section 272 Sunset Order*, FCC 07-159, para. 8, n.32 (citing Letter from Michelle Sclater, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112 at 1 (filed Apr. 24, 2007)).

[191] *See Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14863-64, para. 14 (citing *NCTA v. Brand X*, 545 U.S. at 1000).

[192] *See infra* part III.D.3.b.

demand the most flexible service offerings possible.[193] To compete effectively in providing these customized service packages, AT&T necessarily will need to adapt how it integrates each of its specified services into service packages that meet potential customers' individualized needs. Like its enterprise services competitors, AT&T also will have to offer its customers innovative service arrangements that make full use of its networks' telecommunications and information services capabilities.[194]

55. We conclude that requiring AT&T to unbundle and offer separately the non-TDM-based, packet-switched broadband services and non-TDM-based, optical transmission services underlying these information services – or otherwise comply with the *Computer Inquiry* requirements by virtue of the use of these telecommunications services – is unnecessary to ensure that the charges or practices associated with them are just, reasonable, and not unreasonably discriminatory. On the contrary, as discussed in part III.C.1, above, competitive constraints on AT&T's non-TDM-based, packet-switched broadband services and non-TDM-based, optical transmission services will check AT&T's ability to impose such charges and practices on potential customers. Indeed, like other enterprise services providers, AT&T will have every business incentive to offer the transmission component of these services under just, reasonable, and nondiscriminatory rates, terms, and conditions in order to spread network costs over as much traffic and as many customers as possible.[195]

56. This need to attract as many enterprise and carrier customers as possible also makes clear that application of the *Computer Inquiry* rules to AT&T's information services, to the extent that they include one or more of its existing specified services, is not necessary to protect consumers. Rather, AT&T's need to respond to changing customer demands with innovative offerings should ensure adequate consumer protection. In particular, we find that application of the *Computer Inquiry* rules to these information services constrains AT&T's ability to respond to technological advances and customer needs in an efficient, effective, or timely manner.[196] Eliminating this constraint should benefit potential enterprise customers by giving them increased opportunities to obtain integrated service packages that meet their needs.

57. We conclude that forbearance from applying many of the BOC-specific *Computer Inquiry* rules to AT&T's information services, to the extent that they include one or more of the specified non-TDM-based, packet-switched broadband services and non-TDM-based, optical transmission services, will serve the public interest. Specifically, application of the *Computer II* structural separation or, alternatively, the *Computer III* CEI and ONA requirements unnecessarily constrains how AT&T may offer its broadband transmission services to its enterprise customers. Removing these unnecessary constraints will promote competitive market conditions by increasing the competitive pressure on all enterprise services providers. Forbearance in these circumstances also will increase AT&T's incentives to invest in advanced network technologies that will enable it to provide enterprise customers with increasingly innovative services.

58. This forbearance determination does not extend, however, to the BOC-specific *Computer Inquiry* requirements to the extent they impose the same transmission access or nondiscrimination

[193] *See* AT&T Petition at 2 (stating that the sophisticated business customers purchasing these services "demand customization"); *see also* Legacy BellSouth Petition at 4 (stating its users "know that alternatives exist and are capable of demanding and receiving customized treatment").

[194] *See* AT&T Petition at 4 (submitting that the broadband transmission services for which is seeks relief are even more customized than the transmission services that the Commission addressed in the *Wireline Broadband Internet Access Services Order*); *see also* Legacy BellSouth Petition at 12 (arguing that competitive pressures in the broadband transmission market require the "introduction of new technology and the development of innovative service platforms").

[195] *See Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14892-93, paras 75-76, 14902, para. 92.

[196] *See Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14887-92, paras. 65-73, 14902, para. 92.

requirements that apply to all non-BOC, facilities-based wireline carriers in their provision of enhanced services.[197] We find that relief from these requirements would be contrary to the public interest as it would confer a regulatory advantage on AT&T, vis-a-vis its facilities-based, wireline competitors offering information services. We therefore condition our forbearance from the BOC specific *Computer Inquiry* requirements on compliance by AT&T with the non-BOC transmission access and nondiscrimination requirements in connection with its provision of information services in conjunction with its existing specified broadband services.

b. Non-BOC Requirements

59. The *Computer Inquiry* rules require that SNET (a) offer as telecommunications services the basic transmission services underlying its enhanced services; (b) offer those telecommunications services on a nondiscriminatory basis to all enhanced service providers, including its own enhanced services operations;[198] and (c) offer those telecommunications services pursuant to tariff.[199] For ease of exposition, we refer to these requirements as the transmission access requirement, the nondiscrimination requirement, and the tariffing requirement, respectively. We conclude that forbearance is warranted with respect to the tariff requirement listed above, but not with respect to the transmission access requirement or the nondiscrimination requirement. Accordingly, SNET will be subject to the same *Computer Inquiry* requirements as its facilities-based, wireline competitors.

60. For the reasons described above, we find that forbearance from these three requirements satisfies sections 10(a)(1) and 10(a)(2). In particular, as found above, providers of these types of transmission services face significant competitive pressure from providers that can deploy their own facilities or rely on regulated special access inputs. We find that these competitive pressures are sufficient to ensure that SNET's rates and practices are just, reasonable, and not unjustly or unreasonably discriminatory and to protect consumers absent the *Computer Inquiry* requirements.

61. We conclude, however, that forbearance is not warranted with respect to the transmission access requirement or the nondiscrimination requirement because such forbearance would not be in the public interest pursuant to section 10(a)(3). These requirements apply to all non-BOC, facilities-based wireline carriers in their provision of enhanced services.[200] Given this, we find that forbearance from the *Computer Inquiry* transmission access and nondiscrimination requirements is not in the public interest within the meaning of section 10(a)(3), as it would confer a regulatory advantage on SNET vis-a-vis its facilities-based competitors offering information services.

62. In contrast, the reasons that persuade us to forbear from dominant carrier regulation generally with regard to SNET's existing specified broadband services also persuade us to forbear from the *Computer Inquiry* tariffing requirement to the extent SNET provides information services in conjunction with those broadband services.[201] Therefore, like its non-incumbent LEC competitors, SNET will be free to offer any information service that incorporates one of more of its existing specified broadband services

---

[197] *Computer II Final Decision*, 77 FCC 2d at 474-75, para. 231; *see infra* para. 59.

[198] *Computer II Final Decision*, 77 FCC 2d at 474-75, para. 231; *see CCIA v. FCC*, 693 F.2d at 205.

[199] *Computer II Final Decision*, 77 FCC 2d at 475, para. 231. We note that, under the Commission's *Hyperion Forbearance Order*, which granted nondominant carriers permissive detariffing of interstate interexchange access services, non-incumbent LECs need not offer the basic transmission services underlying their enhanced services pursuant to tariff. *See Hyperion Telecommunications, Inc. Petition Requesting Forbearance, Time Warner Communications Petition for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Exchange Carriers*, CCB/CPD Nos. 96-3, 96-7, CC Docket No. 97-146, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 8596 (1997) (*Hyperion Forbearance Order*).

[200] *Computer II Final Decision*, 77 FCC 2d at 474-75, para. 231.

[201] *See supra* part III.D.1.

without, by virtue of such offering, being required to tariff that underlying telecommunications component of those services.[202]

c. Scope of Relief

63. Our forbearance from the *Computer Inquiry* requirements does not extend to AT&T's information services to the extent it incorporates telecommunications components other than its existing specified broadband services. As with our analysis of dominant carrier regulation of its broadband services,[203] we find that restricting our forbearance from *Computer Inquiry* obligations to services that incorporate these existing broadband telecommunications services is appropriate because we cannot conclude, on the record before us, that AT&T will lack market power with regard to any as yet unoffered broadband telecommunications services. We also cannot find, on this record, that additional forbearance from the *Computer Inquiry* rules would meet the statutory forbearance criteria.

3. General Title II Economic Regulation

64. As part of its request for similar relief to that granted to Verizon by operation of law, AT&T seeks forbearance from any economic regulation that would apply to it, under Title II and the Commission's implementing rules, in connection with its existing and future broadband services.[204] We first address this regulation as it applies to AT&T as a common carrier or a LEC. We then turn to this regulation as it applies to AT&T as an incumbent LEC or to SNET as an independent incumbent LEC.

a. Regulation Applied to Common Carriers or LECs

65. Title II and the Commission's implementing rules impose economic regulation on common carriers or LECs generally regardless of whether they are incumbents or competing carriers. This regulation, though much less burdensome than the regulation imposed on dominant carriers, has been thought to provide important protections against unjust, unreasonable, and unjustly or unreasonably discriminatory treatment of consumers.[205] For example, section 201 of the Act mandates that all carriers engaged in the provision of interstate or foreign communications service provide such service upon reasonable request, and that all charges, practices, classifications, and regulations for such service be just and reasonable.[206] Section 202 of the Act makes it unlawful for any common carrier to make any unjust

---

[202] As a practical matter, however, we note that the existing specified broadband services all appear to be transmission services that AT&T chooses to offer on a common carrier basis today, and thus remain subject to the same Title II regulation applicable to nondominant carriers.

[203] *See supra* part III.D.1.

[204] *See, e.g.*, AT&T Petition at 9-10 (seeking the flexibility to provide its specified services on a common-carriage or private-carriage basis). In this part and in part III.D.4, *infra*, we use the terms "economic regulation" and "public policy regulation" as convenient shorthands to ensure that we address the full breadth of AT&T's forbearance requests. In using these terms, we recognize that they have no well-established, specific meanings. *Cf. AT&T Inc. v. FCC*, 452 F.3d 830 (D.C. Cir. 2006) (*AT&T v. FCC*) (directing that the Commission reconcile its holding that a request for forbearance from "only 'common carrier' and 'economic' regulation under Title II" was insufficiently specific to identify the regulations from which forbearance was sought with the Commission's use of these terms in other proceedings). Our use of these terms here does not in any way prejudge our actions on remand of *AT&T v. FCC*.

[205] *See Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16865-72, paras. 15-31 (1998) (*PCIA Forbearance Order*) (denying PCIA's request for forbearance from sections 201 and 202 of the Act and noting that these provisions "codify[] the bedrock consumer protection obligations of a common carrier. . . ."); Time Warner Telecom Comments at 26.

[206] 47 U.S.C. § 201.

or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services, or to make or give any undue or unreasonable preference or advantage to any person or class of persons.[207] All telecommunications carriers are obligated under section 251(a)(1) of the Act to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[208] Section 251(b), moreover, imposes a number of duties on LECs, including the duty not to impose unreasonable or discriminatory conditions or limitations on resale of their telecommunications services,[209] the duty to implement number portability,[210] and the duty to provide competing telecommunications service providers with access to the LECs' poles, ducts, and conduits under just and reasonable rates, terms, and conditions.[211]

66. With respect to nondominant carriers, the Commission has relaxed tariffing, transfer of control, and discontinuance regulation for carriers that lack market power, although, as discussed above, these carriers are still subject to limited regulation in these areas.[212] In particular, section 214 of the Act requires common carriers to obtain Commission authorization before constructing, acquiring, operating or engaging in transmission over lines of communications, or discontinuing, reducing or impairing telecommunications service to a community.[213] The Commission's discontinuance rules for nondominant carriers require such carriers to file applications with the Commission and provide notice to the affected customers.[214] These applications are automatically granted on the 31st day unless the Commission notifies the applicant otherwise.[215] Moreover, to the extent they are permitted to file interstate tariffs, nondominant carriers must comply with the streamlined tariffing and notice requirements of part 61, subpart C of the Commission's rules.[216]

67. We conclude that the record does not demonstrate that forbearance from these, and other, economic regulations that apply generally to nondominant telecommunications carriers and to LECs would meet the statutory forbearance criteria. Indeed, AT&T asks us to go beyond the relief the Commission has granted any competitive LEC or nondominant interexchange carrier and allow it to offer certain broadband telecommunications services free of Title II regulation, thus creating a disparity in

---

[207] 47 U.S.C. § 202.

[208] 47 U.S.C. § 251(a)(1).

[209] *E.g.*, 47 U.S.C. § 251(b)(1).

[210] 47 U.S.C. § 251(b)(2).

[211] *E.g.*, 47 U.S.C. §§ 224, 251(b)(4).

[212] *See supra* para. 3.

[213] 47 U.S.C. § 214; *see, e.g., Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, Order, 18 FCC Rcd 22737, 22742, para. 8 (2003) (applying five factors to determine whether "reasonable substitutes are available" to consumers). In 1999, the Commission granted all carriers blanket authority under section 214 to provide domestic interstate services and to construct, acquire, or operate any domestic transmission line. *See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11372, para. 12 (1999); 47 C.F.R. § 63.01(a). We also note that, in certain instances, the Commission has granted conditional blanket discontinuance authority to carriers under section 214. *See Wireline Broadband Access Services Order*, 20 FCC Rcd at 14907-08, paras. 100-01.

[214] 47 C.F.R. § 63.71(c).

[215] *Id.*

[216] *See* 47 C.F.R. §§ 61.18 *et seq.*

regulatory treatment between AT&T and its competitors.[217] We find, based on the record before us, that granting AT&T such preferential treatment would be inconsistent with the market-opening policies and consumer protection goals that led Congress and the Commission to impose these economic regulations on carriers that lack individual market power.[218] For example, the protections provided by sections 201 and 202(a), coupled with our ability to enforce those provisions in a complaint proceeding pursuant to section 208, provide essential safeguards that ensure that relieving AT&T of tariffing obligations in relation to its specified broadband services will not result in unjust, unreasonable, or unreasonably discriminatory rates, terms, and conditions in connection with those services.[219] Accordingly, we cannot find that enforcement of these statutory and regulatory requirements is not necessary to ensure that the "charges, practices, classifications, or regulations . . . for[] or in connection with [the AT&T-specified broadband services] are just and reasonable and are not unjustly or unreasonably discriminatory" within the meaning of section 10(a)(1).[220]

68. AT&T also has not shown how continued enforcement of these economic regulation requirements in connection with its specified broadband services is not necessary for the protection of consumers within the meaning of section 10(a)(2) or how forbearance is consistent with the public interest within the meaning of section 10(a)(3).[221] On the contrary, disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.[222] In particular, many of the obligations that Title II imposes on carriers or LECs generally, including interconnection obligations under section 251(a)(1) and pole attachment obligations under sections 224 and 251(b)(4), foster the open and interconnected nature of our communications system, and thus promote competitive market conditions within the meaning of section 10(b). Allowing AT&T, but not its competitors, to avoid these obligations would undermine, rather than promote, competition among telecommunications services providers within the meaning of that provision. Moreover, in originally subjecting nondominant carriers to streamlined discontinuance, transfer of control, and tariffing requirements, the Commission necessarily determined that these requirements were needed to protect the public interest and competitive markets in situations where a carrier lacks market

[217] We note that this request appears inconsistent with certain AT&T's request for regulatory parity among broadband competitors. *See, e.g.*, AT&T Petition at 6 (arguing that "retaining Title II . . . regulation would affirmatively harm the public interest by denying AT&T (and other BOCs) the same flexibility as their competitors"); Legacy BellSouth Petition at 6 (arguing that Legacy BellSouth receive the flexibility that its competitors currently enjoy in participating in and competing in the broadband market); *see also* Legacy SBC Reply, CC Docket No. 01-337, at 3-4 (characterizing as "indefensible" regulatory disparities between incumbent LECs and nondominant interexchange carriers); *see also Applications for License and Authority to Operate in the 2155-2175 MHz Band, WT Docket No. 07-16; Petitions for Forbearance under 47 U.S.C. § 160, WT Docket No. 07-30*, Order, FCC 07-161, para. 9 (rel. Aug. 31, 2007) (denying a forbearance request because the petitioners failed to demonstrate that a forbearance action was in the public interest).

[218] *Cf.* Time Warner Telecom Comments at 26 (contending that AT&T has provided no basis for relief from Title II regulation that applies to both dominant and nondominant carriers).

[219] *See, e.g., SBC Advanced Services Forbearance Order*, 17 FCC Rcd at 27010, 27012, paras. 18, 21 (citing 47 U.S.C. §§ 201-02, 208); *PCIA Forbearance Order*, 13 FCC Rcd at 16865-72, paras. 15-31; *see also* COMPTEL Comments at 18 (arguing that forbearance from sections 201 and 202 would significantly undermine competition); Sprint Nextel Reply at 8 (maintaining that forbearance from sections 201 and 202 would effectively gut the core of the Communications Act); Time Warner Telecom Comments at 26-27.

[220] 47 U.S.C. § 160(a)(1).

[221] 47 U.S.C. § 160(a)(2), (a)(3).

[222] *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14865, para. 17 (creating a regulatory and analytical framework that is consistent across different platforms that supports competing services).

power.[223] Granting AT&T, but not its competitors, forbearance from these and the other obligations that apply generally to common carriers, LECs, or nondominant carriers would result in disparate regulatory treatment for the same or similar services, create market distortions, and fail to protect consumers within the meaning of section 10(a)(2).[224] Accordingly, we deny AT&T's forbearance request to the extent it seeks forbearance from Title II economic obligations, including those discussed above, that apply generally to telecommunications carriers or LECs.

b. Regulation Applied to Incumbent LECs or BOCs

69. Title II and the Commission's implementing rules also impose regulation AT&T in its capacities as an incumbent LEC and an independent incumbent LEC for its affiliate, SNET. For example, section 251(c) of the Act imposes interconnection, unbundling, and resale obligations on AT&T as an incumbent LEC.[225] In addition, AT&T, as a BOC, under section 271 of the Act, was required to demonstrate compliance with certain market-opening requirements before providing in-region, interLATA long distance service and must continue to comply with such market-opening requirements.[226]

70. We conclude that the record before us does not show that forbearance from these and other economic regulations that apply generally to incumbent LEC or BOCs would meet the statutory forbearance criteria. Indeed the record contains no specific information regarding whether application of these regulatory requirements is not necessary to ensure that the "charges, practices, classifications, or regulations . . . for[] or in connection with [the AT&T-specified broadband services'] are just and reasonable and are not unjustly or unreasonably discriminatory" within the meaning of section 10(a)(1).[227] Nor does the record suggest how continued enforcement of these requirements in connection with the AT&T-specified broadband services is not necessary for the protection of consumers or inconsistent with the public interest. We therefore deny AT&T's forbearance request to the extent it seeks forbearance from Title II economic obligations, including those discussed above, that apply generally to incumbent LECs or BOCs.

4. Public Policy Regulation

71. As part of its request for similar relief to that granted to Verizon by operation of law, AT&T seeks forbearance from any public policy regulation that would apply to it, under Title II and the Commission's implementing rules, in connection with its existing and future broadband services offerings.[228] We now turn to this request.

72. Title II and the Commission's implementing rules set forth numerous public policy requirements that apply generally to all carriers, regardless of whether they are incumbents or competing carriers. These requirements advance critically important national objectives, such as ensuring the sufficiency of universal service support mechanisms, promoting access to telecommunications services by individuals with disabilities, protecting customer privacy, and increasing the effectiveness of emergency

---

[223] *See, e.g., Detariffing Order*, 11 FCC Rcd at 20776-77, paras. 84-85.

[224] 47 U.S.C. § 160(a)(2).

[225] *See* COMPTEL Comments at 17 (arguing that the section 251 requirements are necessary to ensure that the BOCs' "wholesale charges, practices, classifications and regulations for broadband services are just reasonable and not unjustly or unreasonably discriminatory"); Sprint Nextel Reply at 10 (arguing that "forbearance also could lift the symmetrical interconnection obligations of sections 251 and 252").

[226] *See* 47 U.S.C. § 271.

[227] 47 U.S.C. § 160(a)(1).

[228] AT&T Petition at 10 n.28 (seeking relief from "all common carrier provisions of Title II" except with respect to universal service); Legacy BellSouth Petition at 8 (seeking relief from application of Title II regulations excluding its obligations to make universal service contributions).

services, among other objectives. For example, section 254(b) of the Act states that "[t]here should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service."[229] Section 254(d) of the Act states that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute" to universal service.[230] These universal service provisions ensure that all Americans, including consumers living in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers, have access to affordable telecommunications services.[231]

73. Similarly, Congress enacted section 225 of the Act to require each common carrier offering voice telephone service to also provide telecommunications relay service (TRS) so that individuals with disabilities will have equal access to the carrier's telecommunications network.[232] Moreover, section 255 sets forth disability access network requirements, and 251(a)(2) prohibits telecommunications carriers from installing any "network features, functions, or capabilities" that do not comply with the disability access requirements in section 255.[233] With regard to customer privacy, certain provisions in section 222 of the Act restrict telecommunications carriers' use and disclosure of CPNI.[234] In these provisions, Congress recognized that telecommunications carriers are in a unique position to collect sensitive personal information and that consumers maintain an important privacy interest in protecting this information from disclosure and dissemination.[235] Other section 222 provisions increase the effectiveness of emergency services by facilitating the provision of vital caller location and subscriber identification information to emergency service providers.[236] We note that AT&T's obligations under CALEA are governed by the CALEA statute,[237] and AT&T remains obligated to comply with those statutory requirements.

74. We find that AT&T has not shown that forbearance from these and the other public policy requirements in Title II and the Commission's implementing rules meets the statutory forbearance

[229] 47 U.S.C. § 254(b)(5). The Commission has emphasized that maintaining the long-term viability of universal service programs is a fundamental goal that must continue to be met in an evolving telecommunications marketplace in which customers are migrating to broadband service platforms. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24954-56, paras. 1-5 (2002) (*Universal Service Contribution Methodology NPRM*).

[230] 47 U.S.C. § 254(d).

[231] *See generally* 47 U.S.C. § 254.

[232] 47 U.S.C § 225. TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a hearing individual. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, para. 2 (2000) (*Improved TRS Order & FNPRM*).

[233] 47 U.S.C. §§ 251(a)(2), 255.

[234] 47 U.S.C. § 222(a)-(c), (f). CPNI is defined to include "(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier." 47 U.S.C. § 222(h)(1).

[235] *See generally* 47 U.S.C. § 222.

[236] 47 U.S.C. § 222(d)(4), (g).

[237] 47 U.S.C. § 229; *see also* Pub. L. No. 103-414, 108 Stat. 4279 (codified as amended in sections of 18 U.S.C. and 47 U.S.C.).

criteria.[238] Indeed, with regard to universal service, AT&T disavows any intent to seek relief from universal service contribution obligations.[239] We believe that by excluding this relief from its forbearance request, AT&T recognized that the public interest requires it to maintain its universal service support obligations. Nevertheless, we include those obligations in our forbearance analysis to ensure that there is no ambiguity with regard to AT&T's continuing duty to include revenues from each of its specified broadband services in its federal universal service support calculations.

75. In particular, we conclude on the record before us that forbearing from the public policy requirements in Title II and the Commission's implementing rules would be inconsistent with the critical national goals that led to the adoption of these requirements. We therefore cannot find that enforcement of those requirements is unnecessary to ensure that the "charges, practices, classifications, or regulations . . . for[] or in connection with [the AT&T-specified services] are just and reasonable and are not unjustly or unreasonably discriminatory" within the meaning of section 10(a)(1) of the Act,[240] or is not necessary for the protection of consumers within the meaning of section 10(a)(2) of the Act.[241] On the contrary, we believe that consumers will continue to receive essential protections from the continued application of these requirements in connection with the AT&T-specified services.

IV. EFFECTIVE DATES

76. Consistent with Section 10 of the Act and our rules, the Commission's forbearance decision with regard to AT&T and Legacy BellSouth shall be effective on October 11, 2007.[242] The time for appeal shall run from the release date of the Order.[243]

V. ORDERING CLAUSES

77. Accordingly, IT IS ORDERED that, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, Petitions for Forbearance filed by AT&T, Inc. and BellSouth Corporation, ARE GRANTED to the extent described herein and otherwise ARE DENIED.

[238] *See, e.g.*, AdHoc Reply at i-ii (pointing out that AT&T failed to address or justify forbearance from Title II provisions that serve public policy goals, such as privacy and disability access, that are unrelated to marketplace competition).

[239] AT&T Petition at 10; Legacy BellSouth Petition at 8; *see generally* 47 U.S.C. § 254.

[240] 47 U.S.C. § 160(a)(1).

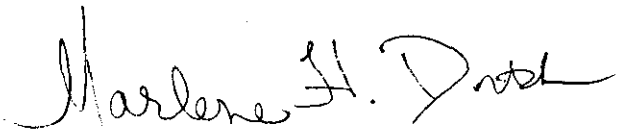
[241] 47 U.S.C. § 160(a)(2).

[242] *See* 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.103(a).

[243] *See* 47 C.F.R. §§ 1.4, 1.13.

78. IT IS FURTHER ORDERED that, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this Order SHALL BE EFFECTIVE with regard to AT&T and Legacy BellSouth on October 11, 2007. Pursuant to section 1.4 and 1.13 of the Commission's rules, 47 C.F.R. §§ 1.4, 1.13, the time for appeal of the Commission's actions with regard to these carriers shall run from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX

PETITIONS FOR FORBEARANCE
WC Docket No. 06-125

Petition	Abbreviation
AT&T Inc.	AT&T
BellSouth Corporation	Legacy BellSouth

COMMENTERS
WC Docket No. 06-125

Comments	Abbreviation
Alpheus Communications, LP, DeltaCom, Inc., Integra Telecom, Inc., McLeodUSA Telecommunications Services, Inc., Mpower Communications Corp., Norlight Telecommunications, Inc., Pac-West Telecomm, Inc., TDS Metrocom, LLC, and Telepacific Corp d/b/a Telepacific Communications	Alpheus
ACS Anchorage, Inc.	ACS
Broadview Networks, Covad Communications, CTC Communications, Inc., Eschelon Telecom, Inc., NuVox Communications, XO Communications, Xspedius Management Company	Broadview
Cincinnati Bell Telephone Company LLC	Cincinnati Bell
COMPTEL	COMPTEL
EarthLink, Inc., New Edge Networks, Inc.	EarthLink
Embarq Local Operating Companies	Embarq
Iowa Telecommunications Services, Inc.	Iowa Telecom
National Telecommunications Cooperative Association	NTCA
New Jersey Division of the Rate Counsel	New Jersey Rate Counsel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Sprint Nextel Corporation	Sprint Nextel
Time Warner Telecom, Inc., Cbeyond Communications, LLC, One Communications Corp.	Time Warner Telecom

REPLY COMMENTERS
WC Docket No. 06-125

Reply Comments	Abbreviation
AdHoc Telecommunications Users Committee	AdHoc
AT&T Inc.	AT&T
BellSouth Corporation	Legacy BellSouth
Broadview Networks, Covad Communications, CTC Communications, Inc., Eschelon Telecom, Inc., NuVox Communications, XO Communications, Xspedius Management Company	Broadview
COMPTEL	COMPTEL
Embarq Local Operating Companies	Embarq
General Communications, Inc.	GCI
Hawaiian Telcom, Inc.	Hawaiian Telcom
Mobile Satellite Ventures Subsidiary LLC	Mobile Satellite Venture
MontanaSky.Net	MontanaSky.Net

National Telecommunications Cooperative Association	NTCA
Qwest Corporation, Qwest Communications Corporation	Qwest
Sprint Nextel Corporation	Sprint Nextel
T-Mobile USA, Inc.	T-Mobile
The Verizon Companies	Verizon

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services

Broadband access is essential to an expanding Internet-based information economy. Promoting broadband deployment is one of the highest priorities of the FCC. To accomplish this goal, the Commission seeks to establish a policy environment that facilitates and encourages broadband investment, allowing market forces to deliver the benefits of broadband to consumers. Today, we take another step in establishing a regulatory environment that encourages such investments and innovation by granting AT&T's petition for regulatory relief of its broadband infrastructure and fiber capabilities. This relief will enable AT&T to have the flexibility to further deploy its broadband services and fiber facilities without overly burdensome regulations.

The relief afforded to AT&T is consistent with and similar to the relief provided in Commission decisions regarding broadband services, packet switching, and fiber facilities. In those decisions, the Commission determined to relax regulations where competition was significant and where regulations acted as a disincentive to deploy new broadband technologies. Accordingly, based on the specific market facts that have been placed before us, we are compelled under the "pro-competitive, deregulatory" framework established by Congress, as well as under section 10's forbearance criteria, to grant AT&T relief from the continued application of legacy regulations.

JOINT STATEMENT OF COMMISSIONER MICHAEL J. COPPS AND COMMISSIONER JONATHAN S. ADELSTEIN, DISSENTING

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services;* WC Docket No. 06-125, Memorandum Opinion and Order (October 11, 2007).

Let us start by noting what may already be obvious to many – dealing with the multitude of forbearance petitions before us is a risky and messy business. There are no requirements on the parties to be explicit in their requests or detailed in the data they provide. It is left to the Commission to sort through and if we don't, we hand over the writing of these rules to industry. With this as a backdrop, today's Order addresses two far-reaching forbearance petitions seeking relief from Title II and *Computer Inquiry* obligations based on the apparent belief that the broadband enterprise services at issue exist in a competitive marketplace. We find the evidence to support forbearance here altogether underwhelming.

First, the definition of the product market to which we should apply forbearance remains in dispute. Merely calling services "broadband enterprise services" does not negate the fact that they are tariffed as special access services and have been identified as such in previous orders. As our colleagues know, there is substantial data available in this and other proceedings to indicate that the special access market is anything but competitive. In fact, the Commission has committed to completing our long-pending rulemaking on this very topic. We should not be granting forbearance for rules covering special access services without a rigorous analysis of competition for these services – an analysis wanting in today's decision.

The Order suggests that forbearance will only impact the largest, most sophisticated business customers, but the record makes clear that services targeted to small, medium, and large businesses are all on the line. Moreover, these services are used as critical inputs by other communications providers, including wireless, satellite, and long distance providers that serve both residential and business customers. For that reason, business users of all sizes, competitive providers, and the Small Business Administration's Office of Advocacy have asked the Commission to conduct a careful analysis before forbearing from the rules in question. We don't see such an analysis here.

With regard to the appropriate geographic market, petitioners argue that a national analysis of the services being considered is applicable here. We have repeatedly argued that deregulating broadband is no national strategy for deploying these services, and we believe that today's Order is a missed opportunity for the Commission to critically review whether a national framework for the market specific services before us is appropriate. Particularly distressing is the fact that more than 13 months into this 15 month forbearance process the Bureau requested market data from petitioners to enable a local market analysis. Not only does this suggest that petitioners did not make their case in this regard, but it is apparent that little if any additional data was provided because the majority concluded it was unnecessary. The Order regrettably concludes that the Commission does not "find it essential to have such detailed information." Also troublesome is the fact that the Order finds that "potential" competition is sufficient to protect consumers. In places where substantial competition does not demonstrably exist, it seems that forbearance actually can make the problem worse as "potential" competitors will have even less ability to successfully compete to provide a check on any anti-competitive behavior.

We have repeatedly proffered that these kinds of decisions are too important to be made without the in-depth market analysis that might support them. Recent Congressional hearings have demonstrated

a growing impatience with policymaking via analysis-poor forbearance decisions. Here the Commission clearly has chosen not to chart a different course. The lack of data concerning the specific product and geographic markets at issue and this Order's lack of analysis cause us great concern about both the substance and the process by which the Commission grants forbearance from our rules.

While we certainly appreciate the Order's decision to implement an expedited complaint process and to retain key interconnection, universal service, privacy, disabilities access, and other Congressionally-mandated provisions -- forbearance from which would have been devastating for consumers and competition -- we cannot support this Order's decision to forbear from rules that provide critical pricing protection.

For these reasons, we dissent from today's Order.

STATEMENT OF COMMISSIONER DEBORAH TAYLOR TATE

RE: Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services, WC Docket No. 06-125; *Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services,* WC Docket No. 06-125 Memorandum Opinion and Order.

In this decision we focus on the state of the enterprise broadband Internet access marketplace. These services are high-speed, high-volume services that large business customers use primarily to transmit large amounts of data among multiple locations- services that are vital for multi-national businesses to compete in this country and around the globe and keep America's great economic engine humming.

An integral part of the pro-competitive, de-regulatory national policy framework established by Congress in the 1996 Act is the section 10 forbearance provision. As providers of voice, broadband, and video services increasingly compete in one another's markets, the Commission has taken a number of important steps aimed at easing the regulatory requirements for broadband facilities and services on the path to competition. We now take another important step and further level the playing field and grant relief to certain providers of broadband services from certain legacy regulatory obligations. In taking this step, we recognize the facilities-based competition that exists in the business broadband Internet access market. I support moving away from regulation where the record shows that a competitive market exists, rendering those regulations unnecessary.

While it can be beneficial to eliminate regulation when appropriate, this decision takes a carefully balanced approach, providing regulatory relief where appropriate, allowing these carriers to respond to marketplace demands efficiently and effectively, but ensuring that less intrusive or less costly regulation remains that protects consumer interests and competition. Importantly, we preserve critical public policy and consumer protection obligations related to 911, emergency preparedness, law enforcement access, privacy requirements, and access for the disabled, and universal service.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services,* WC Docket No. 06-125, Memorandum Opinion and Order

With this partial grant of AT&T's forbearance petition, the Commission is striking a thoughtful balance between de-regulation and consumer protection. Today we are setting up a de-regulatory framework for AT&T's business broadband services, while also ensuring that longstanding consumer protection and competition promotion measures remain in place.

Upon the expiration of the voluntary merger conditions agreed to by AT&T as the result of its merger with BellSouth, after December 29, 2010, AT&T will be relieved from existing tariffing, price freeze and facilities discontinuance requirements for non-TDM-based business broadband services. While the Order grants relief to AT&T, it does not forbear from existing regulation of DS-0, DS-1 or DS-3 type special access services most heavily relied upon by many enterprise users, wireless carriers and competitive local exchange carriers.

In the spirit of Section 10's mandate to promote both competition and the public interest, however, today's action preserves Title II jurisdiction over business broadband services. Maintaining common carrier treatment of these services is significant because our Order gives both competitors and consumers protections against discriminatory conduct and unjust and unreasonable rates, terms and conditions as mandated by Sections 201 and 202 of the Communications Act.

Furthermore, the Commission is creating a procedure whereby complaints filed relating to services covered by this Order must be adjudicated by the Commission within five months and would be subject to broad and aggressive discovery procedures. Such a swift and certain complaint process, combined with strong discovery rules, should provide the parties with greater incentives to reach mutually beneficial agreements before litigating disputes.

As competition in the broadband market continues to grow, especially through the deployment of new wireless technologies, less regulation should be required. However, many parties allege that competition in the special access market is uneven and is limited to certain urban areas, thus creating supply bottlenecks that favor incumbent local exchange carriers in the business broadband and wireless markets. Despite requests for better data to help us resolve disputes of these material facts, the Commission still has inadequate information to determine whether allegations that competition is scarce in certain segments of the special access market have merit. I will continue to work to ensure that these questions are explored further in the Special Access proceeding after a more granular record has been established through detailed mapping of business broadband facilities.

In the interim, the Commission is taking another step toward streamlining its regulation of the broadband market in the wake of the Supreme Court's 2005 *Brand X*[244] decision which declared that broadband services provided over cable facilities are information services. Recent history has shown that thoughtful de-regulation combined with appropriate consumer protections can help spur competition and investment

[244] *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2005).

in new facilities. As a result, a virtuous cycle of competition, investment, innovation and lower prices can result. Today's Order is intended to produce just such a positive environment for American consumers.